Backgrounder

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Center for Immigration Studies

Giving Cover to Illegal Aliens

IRS Tax ID Numbers Subvert Immigration Law

By Marti Dinerstein

Through its issuance of Individual Tax Identification Numbers (ITINs), the Internal Revenue Service (IRS) appears to be blind or indifferent to the reality that it has:

- created an official U.S. tax number that illegal aliens are using as identification, thereby making it easier for them to meld unnoticed into our society;
- endangered homeland security by issuing ITINs to illegal aliens, without adequately ensuring that they are denied to terrorists, criminals on the FBI database, and those under deportation notices;
- exceeded its traditional role as a tax receiver and processor by marketing the ITIN to illegal immigrant communities;
- failed to provide adequate safeguards to prevent illegal aliens from receiving tax benefits to which they are not entitled;
- subverted U.S. immigration laws by withholding information from the INS and SSA about fraudulent activity of illegal aliens;
- provided an ID vehicle that advocates hope will be used to "regularize" illegal aliens; and
- withheld from public review data that is relevant to determining the economic contribution of illegal aliens to U.S. society.

The events of September 11, 2001, were a wake-up call to the American people that something must be done to protect our core identity documents. They were shocked to learn that 18 of the 19 terrorists possessed either state-issued or counterfeit driver's licenses or ID cards and all 19 had obtained Social Security numbers (SSNs) — some real, some fake. The hijackers simply tapped into an enormous market for fraudulent documents that exists because nine million people have successfully breached our borders and now reside here illegally. Their presence has spawned widespread document and identity fraud that threatens our ability to distinguish illegal aliens from U.S. citizens and legal foreign residents.

This realization jolted Congress, many state legislatures, state motor vehicle departments, and the Social Security Administration into taking a variety of steps to protect the integrity of driver's licenses and Social Security cards — the two most widely used identity documents in the United States — from misappropriation by illegal residents. Much remains to be done, but real progress has been made.

Ironically, however, the IRS, a division of the Treasury Department, is simultaneously working to provide illegal aliens with a U.S. government-issued identity number that obviates the need for a Social Security number. It is called the Individual Taxpayer Identification Number (ITIN). Very little public information about these numbers has been made available, even though the IRS began issuing them in July 1996, and over 5,500,000 of them have been issued.

SSA Attempts to Stem Fraud

Employers are required by law to verify that an employee has a valid SSN. The Social Security Administration has long been aware that millions of people living illegally in the United States have obtained SSNs fraudulently using a variety of means. It has systematically taken steps to limit the purposes for which an SSN can be issued and to better validate

Marti Dinerstein is President of Immigration Matters, a public policy analysis firm in New York and is a fellow at the Center for Immigration Studies. She is the author of the recent CIS Backgrounder, *"America's Identity Crisis: Document Fraud is Pervasive and Pernicious."*

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the underlying "breeder" documents presented to obtain a SSN. In May 2002, SSA announced a new initiative, a beneficial by-product of which has been to identify people working illegally in the United States. The program's purpose is to reduce the size and growth of what is known as the Earnings Suspense File (ESF).

When employers file annual withholding tax reports, SSA matches the report from the employer to the name, address, and SSN provided by an employee. So-called "mismatches" are posted to the ESF, which contains information on $327 billion in wages accrued between tax years 1937 and 1999. In 1999 alone, the ESF grew by 8.3 million W-2s and $39.4 billion in wages. A recent SSA report indicated that 96 per cent of ESF wages had been posted since 1970, about the time that an unprecedented number of illegal immigrants began arriving in the United States.[1]

This year SSA sent out over 750,000 letters to employers of approximately seven million workers whose names did not match the SSN provided.[2] Employees who cannot provide a credible reason for the mismatch either voluntarily seek employment elsewhere or are terminated. Unfortunately, the SSA has no legal authority to levy fines and penalties against either employees who fraudulently obtain a SSN or against employers who repeatedly submit large numbers of wage reports with incorrect SSNs. They must rely on the Internal Revenue Service (IRS) to do so, and audits have revealed this rarely happens.[3]

The IRS Provides "Official" Identification to Illegal Aliens

The IRS's seeming lack of interest in protecting the integrity of the Social Security number from fraudulent use pales to insignificance, however, when faced with the reality that it is responsible for providing a backdoor way for millions of illegal aliens to receive a U.S. government-issued identity number. And it is doing so despite the fact that in 1999 the Treasury Department's Inspector General for Tax Administration said the decision by the IRS to issue these Individual Taxpayer Identification Numbers (ITINs) to illegal aliens "seems counter-productive to the Immigration and Naturalization Service (INS) mission to identify illegal aliens and prevent unlawful entry."[4]

Genesis of ITINs. The audit report referenced above said that a 1994 IRS investigation uncovered significant compliance problems "with the $80 billion annual nonresident alien U.S. investment income." In response, the IRS created an ITIN for non-resident aliens in order to match information documents showing dividend, interest and other income earned by individuals to the tax returns they file. The IRS began issuing ITINs in July 1996.

Either at the program's inception or shortly thereafter, the IRS seems to have expanded the initial purpose of the ITIN by making a policy decision to issue it to resident aliens, including individuals residing illegally in the United States. The audit report referenced above questioned this policy to "legalize" illegal aliens.

Significant portions of the report were deemed to be so sensitive they were redacted from the public document, in part because it is felt that some information could be used to facilitate fraud by illegal aliens. Once an IRS report has been redacted, it stays that way. Therefore, the full text of the 1999 Inspector General for Tax Administration's report on ITINs is still not available for public review. No follow-up report was issued.

Illegals get undeserved tax benefits. The 1999 report appears to include extensive commentary on the ITIN applications of 340,000 illegal aliens, but most of it was redacted. The IRS's objective may be to collect tax revenue from the broadest base possible — a laudable goal. Ironically, however, this has resulted in the IRS ignoring illegals' presence in the United States. One of the reasons why illegals are issued ITINs is that IRS regulations determine resident alien status based on "substantial presence" in the United States, not legal residence. Thus, illegal aliens who file tax returns are treated in the same way as legal foreign residents and receive the same tax benefits, such as spousal exemptions, child and education tax credits. The one exception seems to be the Earned Income Tax Credit, which is available to legal permanent residents but which the IRS decided would not be available to illegal aliens.

Intended or not, it is clear that a significant number of illegal aliens are receiving the Earned Income Tax Credit. This is talked about quite openly by their advocates. Moreover, in its publications the IRS is signaling that this is a problem. One of three bullet points at the top of Form W-7 used to apply for an ITIN reads: "Receipt of an ITIN does not make you eligible to claim the earned income credit (EIC)."[5]

Further, a section describing the Earned Income Tax Credit on the IRS web site lists six rules that must be followed. "Rule 1. You Must Have a Valid

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Social Security Number (SSN). . .You cannot get the EIC if, instead of an SSN, you (or your spouse if filing a joint return) have an individual taxpayer identification number (ITIN). ITINs are issued by the Internal Revenue Service to noncitizens who cannot get an SSN."[6]

It is an unfortunate fact of life that U.S. citizens routinely claim tax deductions and credits to which they are not entitled. It is a cat and mouse game that presumably the IRS wins more often than not. However, there was language in the Inspector General's 1999 report implying that both "revenue protection issues" and "operational problems during the implementation" period resulted in the ITIN being vulnerable to fraud. It is possible that the IRS system was programmed in a way that makes it very difficult to prevent payment of the Earned Income Credit if a resident alien unauthorized to work in the United States claims it.

IRS shields illegals from INS. This same audit report said that issuing ITINs to illegal aliens may take on greater significance if the IRS were to come under the scrutiny of Congress. "Illegal alien presence in the United States is a congressional concern which is addressed by legislation in the Welfare Reform Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996."[7]

The Inspector General's audit also pointed out that the IRS has a policy of shielding illegal immigrants from exposure to the Immigration and Naturalization Service (INS), which appears to be in contravention of the express wishes of Congress. "The IRS provides disclosure protection to illegal alien applicants. The Congress has clearly stated how the federal government is to communicate between agencies concerning illegal aliens. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 . . . states that information concerning illegal alien status should be provided to the INS notwithstanding any other law." Subsequent exposition revealed that IRS management believed its own regulations guaranteed the confidentiality of tax return information and did not intend to share any returns with the INS.[8]

If that is still the position of the IRS, it is even more untenable today. The USA Patriot Act of 2001, passed overwhelmingly by Congress in response to the terrorist attacks on America, explicitly calls for greater information sharing among government agencies, law enforcement and the intelligence community.[9]

It is not clear if the IRS regulations regarding confidentiality relate specifically to divulging tax information, such as income, number of dependents, etc., or if they also forbid the IRS from sharing even the taxpayer's name and identification number with another government agency.

It also is unclear if copies (redacted or not) of the Inspector General's 1999 report were shared with Congressional committees responsible for oversight of the IRS. The report was addressed to the IRS Commissioner and noted that copies also were being sent to IRS managers affected by the report's recommendations. This distribution approach differs from that followed by the Inspector General for the Social Security Administration, who also addresses his reports to the Commissioner while simultaneously distributing copies to a long list of members of Congress whose committees presumably have oversight over SSA.

IRS ignores fraudulent use of SSNs. Illegal aliens have been warned by advocates not to use the ITIN when applying for employment, as it would expose their illegal status. All publications from both the IRS and the SSA say that an individual can have either an ITIN or an SSN, but not both. But since employees suffer no penalty for using fraudulent SSNs, they continue to do so. Similarly, since employers benefiting from cheap labor also suffer no penalty, they continue to hire illegal aliens without checking the validity of their SSNs. Once someone is hired, employers begin to withhold taxes.

It is believed that far more ITINs have been issued than annual tax returns filed and that illegal residents who file returns do so to claim refunds. If so, presumably they use the ITIN provided by the IRS as their identifier on the 1040 Form, attaching the W-2 form provided by their employer. The catch is that their fraudulently obtained SSNs appear on the W-2 forms. Illegal aliens can obtain a SSN in a variety of ways. They can make up a number, steal or borrow someone else's, buy a counterfeit Social Security card, or obtain a valid Social Security card fraudulently.[10] What is abundantly clear is that they are not entitled to it.

Knowing that the ITIN would not be necessary if the SSN were legitimate, apparently the IRS has been processing the returns anyway — ignoring this clear violation of its own rules. It could not be determined if there is a penalty attached to using both numbers simultaneously or if the IRS notifies the SSA about the possibility of a fraudulently obtained SSN. If the IRS does not do so, it would appear that the agency is undermining the integrity of Social Security numbers and U.S. immigration law and could be endangering homeland security.

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"For tax purposes only"?

One of three bullet points in the "Before you begin" section on the W-7 form to apply for an ITIN is the following message: "This number is for tax purposes only." That seems fairly straightforward. Yet, it is clear that advocates for illegal immigrants are aggressively pushing use of the ITIN as identification for many other purposes. The website of the National Employment Law Project (NELP), contains a section titled "How Can the ITIN be Used to Show Identity?": "There has been growing interest among immigrants and their advocates in using the ITIN as an alternative to the SSN. Indeed, many immigrant groups are successfully advocating for the use of identity documents other than a SSN in order to obtain drivers' licenses and consumer benefits." NELP goes into extensive detail explaining how illegal immigrants can get around using Social Security numbers.[11]

Numerous newspaper articles describe how the ITIN is being used to open banking accounts and, in some states, obtain driver's licenses.[12, 13, 14]

The most astonishing example is a news release from Fifth Third Bank, headquartered in Ohio. Announcing an initiative to better serve the unique needs of the Hispanic community, Bradlee F. Stamper, President and Chief Executive Officer proudly boasts: "Our first step — and it's a crucial one — is to start accepting new means of ID for persons otherwise shut out of the U.S. banking system. Starting now, Fifth Third will honor the Matricula Consular Card issued by the Government of Mexico and the Internal Revenue Service's Taxpayer Identification Number as legal identification for immigrants who lack proper identification to open savings and checking accounts."[15]

Matricula consular. Most media stories link the ITIN to the burgeoning use of the matricula consular, a photo ID being issued by the Mexican government to its citizens living illegally in the United States. The Mexican government has been lobbying state and local governments as well as banks to accept the matricula as official identification. But banks need an official U.S. tax number in order to open an interest-bearing account and, by definition, illegal aliens are not legally entitled to a Social Security number. So the Mexican government is pushing the ITIN as an acceptable alternative and, apparently, the IRS has raised no objection.

Other than noting on its own publications that the ITIN is "for tax purposes only", the IRS seemingly has made no effort to contact banks or their regulators or state motor vehicle departments to let them know that the ITIN is not being authenticated in a way that makes it safe as identification. This omission endangers homeland security.

No Risk for Illegals

Media stories and immigrant advocates contend that the IRS has embarked on an aggressive marketing effort to achieve widespread distribution of the ITIN within illegal immigrant communities.[16]

The *Chicago Tribune* reported on April 15, 2002, that the "IRS issued more than one million tax IDs last year, up 20 percent from 2000. The agency has issued 4.9 million IDs since it adopted the policy in 1996. [NOTE: As of October 2002, the IRS had issued over 5.5 million ITINs.] Officials presume that most have been issued to illegal aliens, although other people use the IDs as well, such as foreign businessmen working in the United States on short-term projects or foreign relatives still awaiting Social Security numbers. . . .This year, the Chicago IRS office and volunteers have issued thousands of ID numbers through workshops and office visits. Almost 300 immigrants, mainly from Mexico but also from the Middle East and Eastern Europe, pack a typical workshop. The agency is also increasing the number of tax preparers and banks authorized to process ID applications."[17]

Departure from traditional role. This activism seems a strange departure from the IRS's traditional passive role of receiver and processor of income tax returns. It is one thing for the IRS to interpret its regulations in a way that results in issuing ITINs to illegal aliens. But it is quite another matter to seek them out and cater to them, thereby making a mockery of U.S. immigration laws. It raises the question as to who authorized this policy and at what level it was approved.

The IRS has designated "acceptance agents" who are authorized to assist applicants in obtaining ITINs. IRS's website describes acceptance agencies as entities, such as colleges, financial institutions, accounting firms, etc. The "etc." is important because it is believed that some acceptance agents are touting the fact that the IRS will not share information with the INS.

This development was anticipated in the 1999 Inspector General's ITIN audit report, which recommended that: "The IRS needs to include Privacy Act notification on the Form W-7 application form. The Privacy Act notification provides the warning that information can be provided to the Department of Jus-

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tice within the parameters set by IRC 6103." IRS's management response to this recommendation was clear cut and affirmative. "A Privacy Act Notice will be added to Form W-7."[18] The estimated implementation date was August 31, 1999. As of September 2002, there was no Privacy Act notice on Form W-7.

The *Chicago Tribune* reported: "Despite growth in the tax IDs, experts say many immigrants will get the IDs only after assurances that immigration authorities will not be involved. . . . 'They think they will get deported,' said Salvador Gonzalez, director of the Midwest Tax Clinic, a Chicago non-profit agency that helps immigrants obtain the IDs. 'But now people are losing their fear, and I am very, very happy about this.'"[19]

Groups that advise advocacy organizations on legal issues also convey the same message, although more carefully couched. In a paragraph titled "What are the risks in applying for and using the ITIN?" the National Employment Law Project gives the following advice: "It is not in the IRS's tax collection interest to disclose information to the INS. Thus far, advocates have not learned of any specific situations where the IRS has shared information with the INS. However, there is no guarantee that IRS or a state agency would not share this information with the INS."[20]

Delegating Authority to Third Parties

The Inspector General's report also warned that the IRS had put itself into a bind by permitting acceptance agents to function in a dual role, acting on the IRS's behalf as well as the illegal immigrant's. It said that the implementation of the acceptance agents program had gone beyond its regulatory purpose and their role in facilitating the ITIN application process should be re-examined.[21] The current IRS application procedures for becoming an acceptance agent indicate there are two categories — acceptance agents and certifying acceptance agents.

The regulations say: "The role of an acceptance agent is to facilitate the application process and issuance of TINs to alien individuals and foreign persons. An acceptance agent performs this duty by forwarding the completed Form W-7 (together with required documentary evidence) to the IRS."[22]

This contrasts with the significant authority delegated to a "certifying acceptance agent." "A certifying acceptance agent is a person that is authorized under the agreement with the IRS to submit a Form W-7 to the IRS on behalf of an applicant, without having to furnish supporting documentary evidence. Instead, when submitting a Form W-7 to the IRS, a certifying acceptance agent certifies to the IRS that it has reviewed the appropriate documentation evidencing the ITIN applicant's identity and alien status, and that it is maintaining a record of such documentation."[23] This situation seems somewhat akin to our embassy in Saudi Arabia delegating responsibility for visa interviews and document review to local travel agencies — a much-decried practice that has since been discontinued.

Higher stakes. Since the events of 9/11, the Social Security Administration has limited the purposes for which it will issue an SSN and has built more safeguards into authenticating the documents presented to obtain one. Over at the IRS, however, very little public information exists as to how carefully the agency or its acceptance agents authenticate the documents presented to obtain an ITIN. Perhaps they do not feel it is necessary to do so, because the IRS knowingly gives them to illegal aliens.

But the attacks of September 11th, coupled with evidence that Taxpayer Identification Numbers are being used as IDs to obtain driver's licenses and open bank accounts, raise the stakes considerably. Issues relating to benefit fraud pale beside those surrounding homeland security. It is not known if ITINs are easily available to citizens of countries that harbor terrorists or to resident aliens appearing on the FBI's criminal database or to the more than 300,000 aliens who absconded after being served with deportation notices.

Other agencies that provide ID documents, specifically the INS and SSA, have been operating in the glare of Congressional hearings to assure those documents are available only to citizens and legal aliens. It is difficult to understand why the IRS, the only agency that is knowingly offering an official government ID to illegal aliens, has escaped scrutiny.

Amnesty for Illegals Who "Pay Taxes"?

Advocates contend that illegal immigrants work hard in jobs Americans will not take, pay taxes, contribute to society, and thus should be able to earn their way to legal status. This concept, euphemistically called "earned regularization," would create opportunities for illegal aliens to receive lawful permanent resident status by earning "credits" in a number of ways, including by paying taxes.

The withholding of taxes is involuntary. Federal, state, and local income taxes and Social Security

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taxes are withheld from paychecks by employers. Workers have no say in the matter. But taxes withheld are not necessarily taxes paid. The United States has a progressive income tax that applies very low tax rates to low-income households. In fact, millions of households pay no federal tax at all. It is believed that the vast majority of illegal residents who file a tax return using an ITIN get full or partial tax refunds because of the low level of their earnings. Indeed, some erroneously receive the Earned Income Credit, intended to supplement the income of the working poor. Thus, ironically, by issuing ITINs the IRS may actually be *reducing* the tax revenue received from illegal aliens.

Providing an amnesty of some sort to illegal aliens is opposed by a majority of Americans.[24] There has been little support to do so in the current session of Congress. However, the concept is still being pushed by illegal immigrant advocates, by the Mexican government, and by elected officials eager for political support from the large Hispanic community living in the United States.

The principal argument these advocates make on behalf of an amnesty is that illegal aliens pay taxes. It is true that taxes are withheld for many illegal aliens, but it is involuntary. Census data show that a high percentage of Hispanics earn very low wages. If illegal aliens were to be "regularized" and authorized to work in the United States, it is highly likely that they would pay little or no income tax. The IRS has important data relating to how many illegal aliens have been issued ITINs, how many have filed tax returns, and the net amount of tax that was paid after exemptions, credits, and refunds. This aggregated information needs to be made available to the public, so that if Congress ever debates the merits of another amnesty for illegal aliens, it can do so based on facts, not platitudes.

IRS Blind to Risks

It appears that in 1996 the IRS decided to treat illegals as "resident aliens" based on their "substantial presence" in the U.S. That decision made illegal aliens eligible for ITINs. Presumably the IRS's goal was to maximize tax revenues, and it assumed — mistakenly — that the ITIN would be used for tax purposes only. Due to start-up operational problems and subsequent poor administration of the ITIN program, the IRS sustained self-inflicted wounds related to benefit fraud. But, inexplicably, the IRS seems not to have altered its ITIN policies in any meaningful way.

There are many ITIN-related problems that need to be addressed by IRS management and by the Congressional committees with oversight of tax and immigration matters. By far the most urgent issue relates to homeland security. It could be fixed overnight. It is essential that the use of ITINs be strictly limited to tax purposes only. The IRS, or perhaps the Treasury Department of which it is a part, should immediately issue a directive to that effect and widely disseminate it to other federal agencies, state and local governments and their associations, the American Association of Motor Vehicle Administrators, financial institutions' regulators and trade associations, and any other entities that are known to be accepting the ITIN as a form of identification.

September 11 taught us just how important it is to be able to distinguish American citizens and legal foreign residents and visitors from those who have no legal right to be in our country. No security measure is foolproof, but safer is safer. The American people have a right to expect that their government is systematically shutting down any impediments that threaten the integrity of our identity documents.

End Notes

[1] Office of the Inspector General, Social Security Administration. "Recent Efforts to Reduce the Size and Growth of the Social Security Administration's Earnings Suspense File," p. 2. May 2002. http://www.ssa.gov/oig/ADOBEPDF/A-03-01-30035.pdf

[2] AILA Backgrounder on Social Security and Immigration. "Posted on AILA InfoNet at Document No. 38IP2004 (August 9, 2002)." http://www.aila.org contentViewer.aspx?bc=9,722,723,1480&st=38IP2004.

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[4] Office of the Inspector General for Tax Administration. "The Internal Revenue Service's Individual Taxpayer Identification Number Program Was Not Implemented in Accordance with Internal Revenue Code Regulations," Executive Summary. September 1999. http://www.ustreas.gov/tigta/reports/094505fr.html

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[9] Jenks, Rosemary. "The USA Patriot Act of 2001: A Summary of the Anti-Terrorism Law's Immigration Related Provisions," CIS *Backgrounder*, December 2001. http://www.cis.org/articles/2001/back1501.html

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[11] "Immigrants and the Individual Tax Identification Number (ITIN): How Can the ITIN be Used to Show Identity?" p. 1. National Employment Law Project and National Immigration Law Center, revised May 2002. http://www.nelp.org/pub79.pdf

[12] Avila, Oscar. "Tax ID numbers open door wider for illegal immigrants," *Chicago Tribune*, April 15, 2002.

[13] Brewington, Kelly. "Banks' New Services Target Mexican Customers," *The Sun Sentinel*, July 8, 2002.

[14] Ingram, Carl. "Davis: Let migrants drive. Policy: He supports licenses for work related travel while also safeguarding public security," *Los Angeles Times*, March 28, 2002.

[15] http://www.53.com/news/archive_2002.htm#040202b

[16] http://www.ilw.com/lawyers/immigdaily/letters/2002,0709-Dean.shtm

[17] "Tax ID numbers open door wider for illegal immigrants", op. cit.

[18] "The Internal Revenue Service's Individual Taxpayer Identification Number Program Was Not Implemented in Accordance with Internal Revenue Code Regulations," op. cit., p. 39.

[19] "Tax ID numbers open door wider for illegal immigrants," op. cit.

[20] "Immigrants and the Individual Tax Identification Number (ITIN): How Can the ITIN be Used to Show Identity?", op. cit., p. 3.

[21] "The Internal Revenue Service's Individual Taxpayer Identification Number Program Was Not Implemented in Accordance with Internal Revenue Code Regulations," op. cit., pp. 3, 10-12.

[22] Revenue Procedure 96-52, sec. 4.01. http://www.unclefed.com/Tax-Bulls/1996/RP96-52.PDF

[23] Revenue Procedure 96-52, op. cit.

[24] "Attitudes Toward Amnesty: Zogby Poll Examines Support Among Different Constituencies." Center for Immigration Studies *Backgrounder*, September 4, 2001. http://www.cis.org/articles/2001/back1201.html. See also: Saad, Lydia. "Americans Clearly Oppose Amnesty for Illegal Mexican Immigrants." Gallup News Service, Poll Analyses, September 6, 2001; and "New Poll Finds That a Majority of Americans Oppose Illegal Amnesty and Favor Immigration Enforcement." Federation for American Immigration Reform, August 30, 2001. http://www.fairus.org/html/07469108.htm

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Center for Immigration Studies
1522 K Street NW, Suite 820
Washington, DC 20005-1202
(202) 466-8185
center@cis.org
www.cis.org

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